

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

THE UNITED STATES OF AMERICA,)
Plaintiff,)

vs.)

CARAHSOFT TECHNOLOGY CORP.,)
Defendant.)

CIVIL CASE NO.
1:23-cv-01999-RDB

2:37 p.m.

TUESDAY, OCTOBER 17, 2023
Courtroom 5D
Baltimore, Maryland

TRANSCRIPT OF PROCEEDINGS
SHOW CAUSE HEARING
BEFORE THE HONORABLE RICHARD D. BENNETT

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(Computer-aided Transcription of Stenotype Notes)
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P R O C E E D I N G S

(Call to Order of Court.)

THE COURT: This is calling the case of United States versus Carahsoft Technology Corp., Civil Number RDB-23-1999. This is a Show Cause Hearing in connection with a Show Cause Order that I issued on September the 8th with respect to compliance to a Civil Investigative Demand pursuant to an investigation here as to the False Claims Act and an inquiry being conducted by the Government.

This is not a criminal proceeding and there's been no acknowledgment of wrongdoing by the defendant in this matter but we have a situation here with respect to the service of a Civil Investigative Demand and it is alleged there's been noncompliance here with that and that has given rise to this hearing.

I would note that the masking policies of this Court have previously required that masks be worn in all public areas of the courthouse. That is no longer the case. Masks are no longer required, but it is still within the discretion of the presiding judge. Recently I have taken down some of the Plexiglass this past week but I still have Plexiglass in front of the jury box and around Ms. Longmore, the court reporter, and around Mr. Carrick, the deputy courtroom clerk, and we decided to also put Plexiglass around the podium back there to just spread out the potential germ flow. So I do inquire of

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1 the vaccination status of the parties and counsel before me.
2 we have sort of an honor system. If one has not been
3 vaccinated, I just ask you so indicate and Mr. Carrick has
4 masks that can be worn and you just pull it down when you are
5 addressing the Court.

6 I have been fully vaccinated and received my third booster
7 yesterday so I am not wearing a mask, so I do inquire of the
8 vaccination status of those before me. I don't mean to pry on
9 their personal life but I think it's important, so I conduct
10 that procedure.

11 So with that, if counsel will identify themselves for the
12 record, please. First of all, on behalf of the Government.

13 MR. ASIYANBI: Samson Asiyambi for the United States.

14 THE COURT: I'm sorry, Mr. -- I'm sorry, what?

15 MR. ASIYANBI: Samson Asiyambi for the United States.

16 THE COURT: Yes, Mr. Asiyambi. Am I pronouncing your
17 name correctly?

18 MR. ASIYANBI: Asiyambi.

19 THE COURT: Asiyambi, okay. It's nice to have you
20 here. You are from the Fraud Section of Main Justice; is that
21 correct?

22 MR. ASIYANBI: Yes, sir.

23 THE COURT: It's nice to have you here. Welcome.
24 Mr. Vincent Vaccarella, you are also from the Fraud Section; is
25 that correct?

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1 MR. VACCARELLA: That's correct, Your Honor.

2 THE COURT: Nice to have you here as well. Have both
3 of you been vaccinated?

4 MR. ASIYANBI: I am fully vaccinated except for the
5 third booster that just came out.

6 MR. VACCARELLA: Fully vaccinated but I don't have
7 the third booster.

8 THE COURT: That's all right. They're just coming
9 out now. Don't worry about it. That's fine.

10 And finally, we have Mr. Matthew Haven from the US
11 Attorney's Office. Mr. Haven, nice to see you.

12 MR. HAVEN: You as well.

13 THE COURT: And you have been fully vaccinated,
14 correct?

15 MR. HAVEN: Yes, sir.

16 THE COURT: Nice to have all of you here. And on
17 behalf of the defendant Carahsoft Technology Corporation, if
18 I'm pronouncing that correctly, we have with us attorneys from
19 Blank Rome, the office in Washington. It's nice to have you
20 all here. If you'll identify yourselves for the record,
21 please, and indicate your vaccination status.

22 MR. CONWAY: Richard Conway, Blank Rome. With me is
23 my colleague Victoria Ortega. And I am fully vaccinated except
24 for the third booster.

25 THE COURT: Yes. Nice to see you, Mr. Conway. I'm

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1 not sure if any of you have been in my courtroom before. I
2 know Mr. Haven has, perhaps, but it's nice to have all of you
3 here. And Ms. Ortega, have you been fully vaccinated?

4 MS. ORTEGA: Yes, I have, Your Honor.

5 THE COURT: Thank you very much. Let me just go over
6 where we are on this. There appears that there are -- at first
7 it appears that there is really not a lot of dispute here and
8 there's been some recent production here, including, as I
9 understand it, according to Paper Number 16 in this case, there
10 had been a production as recently as yesterday, I believe, of
11 some -- I believe it was yesterday -- some 450,000 pages and
12 58,000 documents. Is that correct, Mr. Conway?

13 MR. CONWAY: That's correct, Your Honor. Before we
14 go further, may I raise two points for the Court?

15 THE COURT: Sure. Absolutely.

16 MR. CONWAY: This is an open hearing.

17 THE COURT: Yes.

18 MR. CONWAY: And I want to let you know that I have
19 been asked by other entities that may or may not be involved in
20 this matter not to mention their names in open court.

21 THE COURT: I understand.

22 MR. CONWAY: And I have agreed to do so, so if there
23 are other entities that we need to talk about, I will talk
24 about them as Entity A or Entity B.

25 THE COURT: That's perfectly fine. I gather that, as

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1 I understand it, in terms of the nature of your client's
2 business here, it is my understanding that essentially your
3 client either directly participates in contracts with the
4 Government with respect to information technology and
5 identification or that it coordinates with third-party
6 contractors as well in doing so. And is that a reasonably
7 accurate lay terminology summary of that?

8 MR. CONWAY: That is correct, Your Honor. It can be
9 both a distributor and a reseller.

10 THE COURT: Yes. I understand. I understand. And I
11 don't really have any need -- we may go into the matter of -- I
12 know there's an issue as to the identification of employees.
13 Am I pronouncing the name correctly, Carahsoft?

14 MR. CONWAY: Carahsoft is correct, Your Honor.

15 THE COURT: Are there any representatives of
16 Carahsoft here today?

17 MR. CONWAY: There are not.

18 THE COURT: There doesn't have to be. I'm just
19 verifying that there are not.

20 MR. CONWAY: There are not.

21 THE COURT: Okay. Certainly we may be getting into
22 the matter of employees for Carahsoft to coordinate with
23 respect to Government agencies either selling directly or
24 acting as a reseller and distributor of [REDACTED]
25 [REDACTED], known as [REDACTED], I believe, in the papers, if I'm not

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1 mistaken. But that may detail how difficult it would be to
2 determine the names of certain employees, but I see no reason
3 to identify other companies here at this point in time.

4 MR. CONWAY: That's fine, Your Honor. Can I mention
5 a second thing?

6 THE COURT: Sure. Just as to that first thing,
7 Mr. Asiyambi -- again, am I pronouncing your name correctly?

8 MR. ASIYANBI: Asiyambi.

9 THE COURT: I'm sorry?

10 MR. ASIYANBI: Asiyambi.

11 THE COURT: Asiyambi, okay. I'm sorry. I apologize.

12 MR. ASIYANBI: That's okay. I've had many years of
13 practice.

14 THE COURT: That's okay. I don't see any reason why
15 the names of the companies need to be discussed here today, do
16 you?

17 MR. ASIYANBI: Probably not, Your Honor. As I told
18 Mr. Conway, we don't necessarily agree to it, but we don't
19 object.

20 THE COURT: That's fine. So that first item,
21 Mr. Conway, that's certainly a reasonable request on behalf of
22 those other companies, and that's fine.

23 MR. CONWAY: The second item, Your Honor, is that
24 about an hour and a half ago or maybe two hours ago, I received
25 from Government counsel a proposed order to resolve this issue

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1 of this hearing.

2 THE COURT: Okay.

3 MR. CONWAY: And I received it while I was on the
4 train coming here. I reviewed it, sent it to my client. Some
5 things I can agree to and some things I need to talk to my
6 client and the E-discovery people about, but I'm not in a
7 position to agree to everything today. I wanted to bring to
8 your attention that the Government has proposed that order to
9 resolve this matter.

10 THE COURT: Okay.

11 MR. CONWAY: And but I --

12 THE COURT: I don't think you need to agree to it and
13 we don't need to worry about the order because the result of
14 this will be that I will issue an order as to what people are
15 or are not going to do. And to the extent that you all think
16 you can work it out, fine, but that's why we're having the
17 hearing today.

18 MR. CONWAY: Thank you, Your Honor.

19 THE COURT: So that's perfectly fine. So with that,
20 let me just go over if I can, just for the record, this being a
21 matter of a public hearing here, that apparently the record
22 reflects that on June the 1st of last year, of 2022, the
23 Government served a Civil Investigation Demand, better known as
24 a CID, specifically Number 22-498, to Carahsoft Technology
25 Corporation seeking certain information regarding [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] That's the thrust of the
5 investigation from my point of view reviewing the papers.

6 And then in July of this year, a length of 13 months
7 later, this summer the Government petitioned this Court for an
8 order directing Carahsoft to comply with that Civil
9 Investigative Demand. So it appears to be undisputed, for
10 whatever reason there's been a year and a month delay in terms
11 of these documents and these issues, so there hardly can be
12 said to be an issue of urgency here in light of the clear
13 chronology of this case.

14 On September the 8th, I entered an order requiring
15 Carahsoft to show cause before this Court why an order should
16 not be issued under the False Claims Act, under 31 United
17 States Code § 3733, directing the production of certain
18 documents and information.

19 I would note that the False Claims Act clearly provides
20 that as a tool that is utilized by the Government to recover
21 losses it believes has occurred as a result of fraud, and the
22 False Claims Act authorizes the Attorney General or his or her
23 designee before commencing a civil proceeding to issue a Civil
24 Investigative Demand upon any person who may be in possession,
25 custody, or control of any documentary material or information.

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1 So that is the thrust here of the hearing, and as I
2 understand it, the Carahsoft Technology Corporation is a
3 Government IT solutions producer, meaning that it either
4 distributes technology solutions directly to the Government or
5 coordinates with that distribution by other contractors. And
6 before the Court is essentially the petition, the specific
7 petition -- I recognize that the initial petition was
8 unredacted and then the Government subsequently filed two
9 redacted versions of the petition, Paper Number 3 filed on July
10 27th, and Paper Number 5 filed on July 28th. Essentially, I
11 will just refer to, I guess, the most relevant one at this
12 point in time.

13 So with that, let me see if I can just make any other
14 summaries here for the record before I hear from counsel on
15 this, and I will hear first from Government counsel and then
16 from the defense. And it is my understanding that Carahsoft
17 has not opposed responding to the CID but contends that it has
18 substantially complied and made good faith efforts and does
19 contend that some of the requests are unreasonably broad or
20 unduly burdensome. So that's the thrust of where we are here.

21 And I think that with that, we -- one of the last thing to
22 summarize where we are is that as to interrogatories in this
23 matter, there was -- as I understand it, it is contended that
24 Carahsoft has not responded to a single one of 13
25 interrogatories and in its responsive pleading Carahsoft has

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1 requested that I approve a proposed schedule for interrogatory
2 response, which would be 30 days from the hearing in this
3 matter. The Government would like it to be a shorter time
4 period, but as to that, I have no problem with the 30 days.

5 I do have a sense that we don't agree on what the scope of
6 the interrogatories should be, so while you are here in court
7 we're going to try to deal with, I think, or try to get some
8 focus on whether it's overly burdensome or not. And then
9 furthermore, there is a request for documents and I believe
10 there is some 18 requests for documents over the last year and
11 we will need to resolve the time period on that in terms of
12 what records are being sought.

13 So I think that that's a reasonably accurate summary of
14 where we are. And having said that, I'll be glad to hear first
15 from Government counsel on this and where the Government
16 counsel believes we are and then I'll hear from defendant's
17 counsel and we will proceed.

18 By the way, you can stand at the table or at the podium,
19 whatever makes you more comfortable. You're free to do
20 whatever.

21 **MR. ASIYANBI:** Thank you, Your Honor.

22 **THE COURT:** Yes, Mr. Asiyambi.

23 **MR. ASIYANBI:** With the Court's indulgence, I'd like
24 to begin with the interrogatories because I think that's the
25 least controversial of the conversations that we are going to

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1 have this afternoon. On the one part, I don't recall
2 Mr. Conway having raised with us any objection to the language
3 of the interrogatory, so --

4 **THE COURT:** Just pull that microphone a little bit
5 closer to you, if you would. Thank you. There you go. Thank
6 you.

7 **MR. ASIYANBI:** I was just saying that I don't recall
8 Mr. Conway ever raised any objection about the scope of the
9 interrogatories except that he just needs 30 days from the
10 hearing to respond to them, and I think the United States is
11 prepared to consent to a 30-day timeline to respond to the
12 interrogatories.

13 **THE COURT:** well, 30 days from today's date would be
14 Friday, November the 17th. I would note that I thought that I
15 picked up -- and this may be as to a document request -- but I
16 thought that there has been some issue, and I'm not sure it's
17 in a document request or an interrogatory, with respect to
18 Carahsoft not yet identifying the employees who are likely to
19 have relevant documents.

20 **MR. ASIYANBI:** Your Honor's recollection is correct.

21 **THE COURT:** Okay. And I think we need to address
22 that, and I know that from Carahsoft's point of view there has
23 been some contention as to overbreadth as to that. It did
24 catch my eye that some of the information the Government has
25 sought, but this is in a document request, is with respect to

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1 [REDACTED], and I made a note
2 there. And you'll find I tend to have a hot bench and ask
3 questions, so I'll allow you to engage. When I was trying
4 cases, I got frustrated if you just argued and the judge didn't
5 respond one way or the other. I either thought he or she has
6 already decided or they haven't read it.

7 So I think you'll see that -- Ms. Hudson, my law clerk,
8 has prepared me for this. I have a little note saying, "what
9 difference does it make?" I mean, the issue of the [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] [REDACTED]
13 [REDACTED]
14 [REDACTED]. That's what the inquiry is, is it
15 not?

16 MR. ASIYANBI: That's correct, Your Honor.

17 THE COURT: [REDACTED].

18 MR. ASIYANBI: We are investigating [REDACTED]. And
19 the relevance, Your Honor, is that we can determine whether a
20 company like Carahsoft can pay damages and the extent of the
21 damages [REDACTED].

22 THE COURT: well, that's if they're liable. That's
23 if they're liable.

24 MR. ASIYANBI: That's if they're liable but that's
25 part of the analysis we have to conduct on the front end of --

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1 **THE COURT:** well, let me just cut you off there. I
2 understand exactly what you are saying, but it's up to the
3 Court and the adversarial process as to whether or not they are
4 liable. And in this case, this is a nonjury case and you're
5 certainly entitled to that at some point in time, but I
6 don't -- in terms of keeping focus on documents here, I guess
7 we're sort of jumping ahead a little bit.

8 But just as I have a hard time believing Carahsoft can't
9 find out who the employees are who are relevant here and
10 Ms. Conway and Ms. Ortega's going to have to explain to me why
11 you can't specifically identify each and every employee who's
12 involved in these, I don't care whether it's 13 or 1300, it's
13 pretty clear that it's a multinational effort and it's fine,
14 but you can identify the employees.

15 The flip is it caught my attention with respect to
16 [REDACTED]
17 [REDACTED] is relevant in terms of whether there's a judgment and it
18 may be down the road, but in terms of these initial document
19 requests, I think that's a little bit of an overreach. I think
20 it's a little bit of an overreach.

21 **MR. ASIYANBI:** Your Honor, if we bring a case, we do
22 have to prove damages and that's why those documents can become
23 relevant, but to be sure, the dispute here is not about the
24 [REDACTED]. The dispute
25 is the e-mails. You know, before we can actually get to

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1 damages point, we have to prove or we have to even determine
2 for us whether there is a case here that requires enforcement.

3 THE COURT: [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 MR. ASIYANBI: Correct.

8 THE COURT: -- in terms of [REDACTED], okay? But at
9 this point in time that is not going to include [REDACTED]

10 [REDACTED]

11 [REDACTED], the simple answer
12 is that you're not entitled to it yet.

13 MR. ASIYANBI: Well, if that's where -- if the Court
14 decides that we're not entitled to that yet, we'll live with
15 it, but, you know --

16 THE COURT: Well, I think you'll have to. That's
17 right. We're laughing here. That's usually the way it works.
18 I'm just trying to zero right in on the facts of the matter.

19 MR. ASIYANBI: That's a fair point.

20 THE COURT: It's your time in the barrel on this
21 because Mr. Conway or Ms. Ortega is going to be in the barrel
22 in terms of why there's some delay on these names of these
23 employees. Obviously you're entitled to get the names of
24 employees who dealt with either the Government or with these
25 other contractors. I mean, it's not that complicated.

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1 MR. ASIYANBI: I think Mr. Conway would -- I assume
2 he'll be able to admit to you that over the course of our
3 conversations before we filed the petition, we've never raised
4 any concern about submitting to us [REDACTED]
5 [REDACTED].

6 THE COURT: Okay. That's fine. That's good.

7 MR. ASIYANBI: Our concern has always been with
8 e-mails.

9 THE COURT: That's fine.

10 MR. ASIYANBI: You know, our cases rise and fall on
11 whether we can collect the e-mails and review the e-mails and
12 determine whether there is conduct here.

13 THE COURT: Sure.

14 MR. ASIYANBI: Without that, you know, the [REDACTED]
15 not going to matter to us.

16 THE COURT: That's exactly my point.

17 MR. ASIYANBI: And we accept that, but we can't get
18 to the e-mails and we can't even make a determination in the
19 first instance whether we have a concern here that merits
20 making an enforcement decision. And, you know, I think
21 Carahsoft's role in this, this is a [REDACTED]
22 [REDACTED] and Carahsoft sits in a very prime position. It
23 accounts for about [REDACTED] percent of the Government's sale
24 for this product. And not only that as the distributor, it
25 accounts for [REDACTED].

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1 So its unwillingness to produce the documents or its
2 refusal to produce the documents we need has, in fact, stifled
3 this investigation, prevented us from being able to advance the
4 work, and it's wasted a lot of our resources in bringing this
5 petition to enforce.

6 It's essentially not a -- there's nothing remarkable about
7 what we're asking for. You can identify one request and delay
8 the response to that request, which happens all the time when
9 it comes to CID, and if Mr. Conway had come to us and said, I
10 want to delay responding to the request about [REDACTED]
11 [REDACTED], we would have said, fine, delay that, get us the e-mails
12 first. But he hasn't been willing to do that and didn't do
13 that until after we filed the petition. And once we filed the
14 petition, he produced to us 11,000 in the first tranche. He
15 made another production to us just last Friday that consisted
16 of 58,000 documents. And in both of those tranches, we still
17 have concerns that Carahsoft is not fully compliant. And this
18 is borne out by multiple conversations with Mr. Conway to try
19 to resolve this matter and by looking at the documents they
20 produced to us.

21 So in the first tranche of documents they produced to us,
22 we looked at to say, okay, let's try to reconstruct a number of
23 [REDACTED] to see if we have all the documents for that
24 [REDACTED]. And for virtually all the [REDACTED] we looked at, we
25 didn't have enough of the documents. For [REDACTED], as

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1 we noted in our reply brief to the Court, there was no document
2 whatsoever. On [REDACTED] that Carahsoft won for [REDACTED]
3 we have just four e-mails.

4 And in spite of all of those things, when we went to
5 Mr. Conway and explained to him that your process for
6 collecting and producing documents to us is not adequate to
7 respond to the CID, he balked at that. He said, no, he's
8 completed responding to the CID. And on top of that, he
9 produces 58,000 documents after telling us and after telling
10 the Court that it substantially responded to the CID. And you
11 can't square those inconsistencies where you're telling the
12 Government that you've complied, you're telling the Court
13 you've complied, after you're told that you haven't complied
14 that you produce 58,000 documents and turn around and claim
15 that you've complied again.

16 THE COURT: well, let me just -- because we have a
17 lot of ground to cover here, and we're not in any hurry, but in
18 terms of the interrogatories, as I understand it and apparently
19 it was even as recently as maybe two hours ago, Mr. Conway sort
20 of suggested that there's been some suggested resolution here.

21 As to the interrogatories, it's my understanding, looking
22 at the papers filed, there are a total of, it appears --
23 actually it appears that there are, yes, 13 interrogatories,
24 okay, that are at issue here. And looking at those in terms of
25 [REDACTED]

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1 [REDACTED], I don't think we're in an overbreadth
2 issue as to those, and as far as I'm concerned, looking at
3 those 13 interrogatories, the response should be made by
4 Friday, November the 17th. Now, that's satisfactory to you as
5 to the interrogatories, correct?

6 MR. ASIYANBI: Yes, Your Honor.

7 THE COURT: well, let's stay on those. We'll get to
8 the documents in a minute. Just one second. Let me hear from
9 Mr. Conway. Mr. Conway, on this -- you may be seated for a
10 minute, Mr. Asiyambi.

11 MR. ASIYANBI: Thank you.

12 THE COURT: Mr. Conway, on this, or Ms. Ortega,
13 whoever's going to argue this point, the interrogatories which
14 are contained in the petition ECF Number 1, the interrogatories
15 providing [REDACTED]

16 [REDACTED]
17 [REDACTED].

18 I don't gather that you've made any strong objection to
19 those. You just want to have more time and I'm certainly, in
20 light of the delay resulting from the Government for a period
21 of time, I think 30 days is perfectly appropriate. Does that
22 meet your request or not?

23 MR. CONWAY: 30 days is fine, Your Honor. The only
24 issue which we've raised about the Government's requests on the
25 interrogatories has to do with Interrogatories 5, 6, 7, 12, and

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1 13.

2 THE COURT: Wait one second. 5.

3 MR. CONWAY: 5.

4 THE COURT: 6.

5 MR. CONWAY: 6. 7.

6 THE COURT: 7.

7 MR. CONWAY: 12.

8 THE COURT: 12.

9 MR. CONWAY: 13.

10 THE COURT: 13, okay. And that issue, looking at
11 those, just for the record, provide [REDACTED]

12 [REDACTED]

13 [REDACTED] --

14 MR. CONWAY: Right.

15 THE COURT: -- that [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED].

21 what is your objection to those? That's sort of a general
22 summary to those five questions.

23 MR. CONWAY: Our objection is that the CID -- and I
24 need to be careful here about names.

25 THE COURT: That's fine. Just do Company 1, 2, 3.

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1 It doesn't make any difference. That's fine.

2 MR. CONWAY: The CID talks about certain products for
3 [REDACTED] involving a certain [REDACTED] program, [REDACTED] program;
4 and yet 5, 6, 7, 12, and 13 do not relate to that program. It
5 simply relates to [REDACTED]

6 [REDACTED]
7 [REDACTED]

8 THE COURT: well, I guess my question, when you say
9 the [REDACTED] are you referring -- if I'm off base on this,
10 correct me. Are we referring to the program referred to as
11 [REDACTED], which is [REDACTED]? Is that the
12 program you're talking about?

13 MR. CONWAY: No. The program is the [REDACTED]
14 [REDACTED].

15 THE COURT: [REDACTED], okay.

16 MR. CONWAY: [REDACTED].

17 THE COURT: [REDACTED], okay.

18 MR. CONWAY: Right. And if you look at the
19 definition in the interrogatories and you look at Definition
20 13 -- and I don't want to say the companies' names here.

21 THE COURT: Hold on one second. I'm trying to wade
22 through the interrogatories.

23 MR. CONWAY: Certainly. It's on Page 7 of --

24 THE COURT: I got it. Hold on a second.

25 MR. CONWAY: Okay.

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1 THE COURT: Yes. You're referring to the term
2 [REDACTED]?

3 MR. CONWAY: Yes, I am.

4 THE COURT: Okay.

5 MR. CONWAY: And the CID is talking about an

6 [REDACTED]

7 [REDACTED]; yet, if you look at Interrogatories --

8 THE COURT: 5, 6, 7, 12, and 13, you say it's broader
9 than that?

10 MR. CONWAY: It's much broader than that. It refers
11 to [REDACTED]. If you read 5,
12 6, 7, 12, and 13, there's no reference in any of those to an
13 [REDACTED] [REDACTED]. And I will tell
14 the Court --

15 THE COURT: Let me just cut right to the core of
16 this. Mr. Asiyanbi, is there any difficulty with narrowing it
17 to [REDACTED] that's referenced in the
18 interrogatory?

19 MR. ASIYANBI: Your Honor, counsel is entirely
20 incorrect. If you look at Page 1 of the CID, it limits the
21 scope of the entire CID, and we've explained this to him
22 before.

23 THE COURT: Okay. It limits it to the [REDACTED] that
24 he's referring to, correct? The term [REDACTED] is then
25 defined for a number of definitions, Number 13. So you agree

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1 with Mr. Conway's point on this, correct?

2 MR. ASIYANBI: Correct. We told him multiple times
3 now that the scope of the CID is limited to the description of
4 the purpose of the CID.

5 THE COURT: That's fine. That's how it will be
6 interpreted.

7 MR. CONWAY: That will be fine. That's fine with us,
8 Your Honor.

9 THE COURT: Okay. That's fine. And so can you get
10 all that information to the Government by Friday, November the
11 17th?

12 MR. CONWAY: I believe we can, Your Honor.

13 THE COURT: All right. Okay. So that resolves the
14 interrogatory issue, so I guess we're back now to the matter of
15 requests for documents.

16 Essentially, we have two main topics to deal with, do we
17 not, interrogatories and request for documents. All right.
18 And as to that, it's my understanding that there's been
19 certainly some recent activity in terms of production of
20 documents. Let me just go over the 18 document requests here.
21 Give me one minute.

22 (Pause in Proceedings.)

23 MR. ASIYANBI: Your Honor, if you have a moment?

24 (Pause in Proceedings.)

25 THE COURT: All right. In terms of the document

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1 requests, the documents are a total of 18 document requests in
2 the same document following the request for interrogatories.
3 And I'm not sure if I understand what the specific objections
4 are to these 18.

5 First of all, Mr. Conway, the Government has contended
6 there's been a lack of production and I know that apparently as
7 of yesterday there was a very significant production, but it's
8 contended here in its reply, the Government noted that two
9 weeks after the initial petition was filed, 13,733 documents
10 were produced including 11,637 e-mails, and then we now
11 apparently have another production of 450,000 pages and 58,000
12 in documents yesterday. So I'm not sure where we are on this
13 document production but it's obviously increased in the shadow
14 of this proceeding. So tell me what objections you have to the
15 document requests.

16 MR. CONWAY: You are correct, Your Honor. After
17 we -- the petition was filed, we've had a number of
18 conversations with Government counsel, and we understand their
19 concerns about the approaches we used in our methodology, and
20 we have decided to use their methodology. We were using manual
21 approaches. They wanted electronic approaches. They wanted
22 search terms. We had four or five custodians. They wanted 23
23 custodians. We used 30.

24 So for that reason we wound up running computer searches
25 and we wound up getting over 3 million hits, which we have now

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1 reduced down to the 450,000 pages by using search terms, which
2 the Government asked us to do. We asked the Government for
3 search terms. They won't give us search terms, so we developed
4 our own search terms.

5 THE COURT: Was that the reason for the six-month
6 delay in terms of search terms?

7 MR. CONWAY: That's part of it, Your Honor.

8 THE COURT: From January to July of this year?

9 MR. CONWAY: That's part of it, yes. Part of it was
10 formatting, and that was our fault. When we formatted these
11 documents originally, we formatted them in a way that the
12 Government couldn't use them. We formatted them the way that
13 we normally format them. The Government wanted them formatted
14 in a different way.

15 THE COURT: Okay.

16 MR. CONWAY: And so we then went back and reformatted
17 them several times and provided them to the Government at the
18 end of the year and asked the Government to let us know if the
19 format was correct. We didn't hear from the Government on that
20 for seven months.

21 What happened was, in July, late July, we get an e-mail
22 from Mr. Vaccarella saying they'd filed this petition. So we
23 then talked to the Government about the petition, talked about
24 what their concerns are, what they wanted, and then we went
25 ahead and did it their way, not our way.

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1 **THE COURT:** well, I think -- I suggest that, counsel,
2 one of the ways we'll deal with any six-month delays henceforth
3 is that Government counsel and defense counsel will submit a
4 status report every 30 days to the Court and that makes
5 everybody have it in their diary so it doesn't get lost, you
6 know. We all know, you know, something gets off diary and it's
7 buried, whether it's in the private sector or the government
8 sector, when it gets off diary it just disappears until
9 somebody shakes the tree and says what happened.

10 Obviously there was a six-month delay and I think the way
11 to avoid that is that the order of the Court will reflect a
12 30-day status report each time and we'll just plow through
13 this.

14 **MR. CONWAY:** And we're fine with that, Your Honor.
15 Government counsel has talked about the fact that we haven't
16 disclosed the Carahsoft employees who worked on this program.

17 **THE COURT:** As limited and defined now as we've
18 just --

19 **MR. CONWAY:** Yes.

20 **THE COURT:** Yes.

21 **MR. CONWAY:** We have, in fact, done that and we
22 submitted to the Court yesterday an Exhibit 2, which your court
23 clerk has, which is a list of all the employees involved.

24 **THE COURT:** Right.

25 **MR. CONWAY:** It's one page.

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1 THE COURT: That's ECF Number 16, and it was filed
2 yesterday.

3 MR. CONWAY: This is Exhibit 2.

4 THE COURT: Yes. I'm taking a look here right now.

5 MR. CONWAY: I have copies I can hand up if you want.

6 THE COURT: I think I'm fine. I think I'm fine.

7 Ms. Hudson has a whole notebook here for me.

8 MR. CONWAY: It's Exhibit Number 2, one page.

9 THE COURT: Yes. Well, if not, we'll get it. I
10 don't think I see the exhibit. It's all right. You've
11 essentially specified -- there it is. Okay. That's why it's
12 not in the notebook, okay. That's fine. Okay. Thank you very
13 much, Mr. Carrick.

14 These were filed apparently yesterday and you have been
15 able to [REDACTED]

16 [REDACTED], correct?

17 MR. CONWAY: Yes, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]. So the Government

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1 says we haven't given them this. We have.

2 THE COURT: Well, you've given it to them in the last
3 24 hours.

4 MR. CONWAY: No, we gave it to them on Friday. We
5 gave it to you yesterday.

6 THE COURT: All right. Well, Friday, and yesterday
7 was Monday. Okay. We're going to try to break this pattern of
8 document production in the shadow of court action. But it
9 appears you do have that information now, correct,
10 Mr. Asiyambi? Is that correct?

11 MR. ASIYANBI: We do, Your Honor, but this is
12 information we've been asking for since June of 2022.

13 THE COURT: I understand. Well, we had a six- or
14 seven-month delay there from January of 2023 to July of 2023
15 and there was no activity of any kind.

16 MR. ASIYANBI: There is no activity from Carahsoft.
17 We've been trying to investigate this case and they've stalled
18 our investigation because they've refused to provide documents.

19 THE COURT: Well, I understand. I'm not going to
20 assess blame one way or the other.

21 MR. ASIYANBI: Understood.

22 THE COURT: From their point of view they asked for
23 search terms and then you didn't get back to them for six
24 months, but that's --

25 MR. ASIYANBI: That's -- Your Honor, Mr. Conway is

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1 shading the truth and the accuracy of what occurred in this
2 instance. In a normal course of investig --

3 THE COURT: I'm not going to litigate that.

4 MR. ASIYANBI: I understand.

5 THE COURT: I really don't care. I'm not casting
6 blame on anyone. That's why we're going to have 30-day status
7 reports. I'm not going to rely upon the Government in terms of
8 your schedule. You'll be on my schedule or the Court schedule
9 and Carahsoft will be on the Court schedule and we'll have
10 30-day status reports so this six-month time lapse won't happen
11 again. And that's fine. I'm not casting aspersions either
12 way. Either I'll do it or very likely we're going to have a
13 magistrate judge assigned to this matter in terms of monitoring
14 the compliance with the CIDs as we proceed forward. That would
15 be agreeable to the Government, correct?

16 MR. ASIYANBI: I think so, Your Honor.

17 THE COURT: Mr. Conway, that would be agreeable to
18 you, would it not?

19 MR. CONWAY: It is, Your Honor.

20 THE COURT: Okay. I'm not going to reassign the case
21 to another magistrate judge. I've got the case in terms of
22 this is a bench trial but in terms of monitoring this, I think
23 it would be constructive we have 30-day status reports and a
24 magistrate judge will be assigned to deal with any discovery
25 issues going with compliance with this False Claims Act

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1 inquiry. So that would be the best way to handle it seems to
2 me.

3 MR. ASIYANBI: Can I make one modification to the
4 scope conversation we were having earlier?

5 THE COURT: Sure. Sure.

6 MR. ASIYANBI: I think Mr. Conway suggested that the
7 scope of the CID relates to [REDACTED], which is
8 one of the key contracting vehicles that the [REDACTED]
9 [REDACTED] uses --

10 THE COURT: Yes.

11 MR. ASIYANBI: -- to purchase this sort of [REDACTED]
12 [REDACTED].

13 THE COURT: Right.

14 MR. ASIYANBI: In fact, the CID [REDACTED]
15 [REDACTED]. The CID covers the purchases by [REDACTED]
16 [REDACTED]. That's the limited principle within the CID.

17 THE COURT: Okay.

18 MR. ASIYANBI: Now, most of the [REDACTED] purchases --

19 THE COURT: He's correct about the program involved,
20 though, correct?

21 MR. ASIYANBI: Right. He's correct about the program
22 involved.

23 THE COURT: All right.

24 MR. ASIYANBI: So most of the [REDACTED] purchases occurs
25 through [REDACTED]. I don't know the percentage, Your Honor. It may

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1 be around 90 percent or 80 percent, but there's some purchases
2 that occurs through another vehicle called [REDACTED]
3 [REDACTED]
4 [REDACTED] so long as it's [REDACTED]
5 [REDACTED] is the one purchasing it is within the scope of the CID
6 whether [REDACTED] --

7 THE COURT: I understand. As long as it stays
8 limited to the particular program.

9 MR. ASIYANBI: Yes, Your Honor. As long as it stays
10 limited to the purchaser, in this instance the [REDACTED]
11 [REDACTED].

12 THE COURT: Okay. You agree with that, Mr. Conway?

13 MR. CONWAY: I agree that the CID is limited to [REDACTED],
14 Your Honor.

15 THE COURT: That's fine.

16 MR. ASIYANBI: Sorry. Your Honor, we just said two
17 different things.

18 THE COURT: You agree -- Mr. Conway, this isn't
19 complicated. The Government can file a CID -- Mr. Conway, for
20 one second -- in terms of looking at -- the Government can file
21 a CID tomorrow morning and they can adjust their request. So
22 my point is to get this thing moving. In terms of trying to
23 parse the definitions, it's not complicated. The Government
24 can indicate what the CID says and if necessary they amend it
25 and issue another CID. So I think the way to move on it is to

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1 understand that what the terms mean and you've aptly noted the
2 product that's involved and we stayed focused upon that, but I
3 understand what the Government counsel's saying and to the
4 extent you think that's not included in the CID, they can just
5 modify it and amend it.

6 MR. CONWAY: I don't think it's included in the --

7 THE COURT: Then it now is. Just file a CID and
8 modify it. It's as simple as that. It's certainly relevant.
9 I understand what the nature of this inquiry is. This is an
10 inquiry about [REDACTED], plain and simple, correct?

11 MR. CONWAY: That's what I understand.

12 THE COURT: That's what it is. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] That's the inquiry.

18 So to the extent that we're trying to determine it's more
19 narrowly placed, it's not more narrowly placed. If you think
20 that's the argument, I'll just tell Government counsel to file
21 an amended CID. That's the inquiry. The inquiry has to do
22 clearly with respect to account representatives, either with
23 Carahsoft Technology Corp. or any involvement with other
24 companies in terms of an [REDACTED], okay? That's
25 where we are on it.

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1 And to the extent that you're disagreeing upon the term
2 of -- the scope, I understand what the scope is and, if
3 necessary, the Government counsel can just file an amended CID
4 under the False Claims Act. But I think that we're clear what
5 this case is and is not about. I've already noted that it
6 doesn't mean you start trashing through all the [REDACTED]

7 [REDACTED]
8 [REDACTED] [REDACTED]
9 [REDACTED] that you have noted
10 is what the inquiry is about. In a nutshell, that's what the
11 inquiry is about.

12 MR. CONWAY: Okay. So as I understand it now, it's
13 [REDACTED] plus [REDACTED]?

14 MR. ASIYANBI: It's purchases by the [REDACTED]
15 [REDACTED] no matter which vehicle they use to purchase it.

16 MR. CONWAY: Is that [REDACTED] or other things?

17 MR. ASIYANBI: Well, [REDACTED].

18 MR. CONWAY: [REDACTED]?

19 MR. ASIYANBI: Any purchasing vehicle that the
20 [REDACTED] used is within scope of the CID.

21 MR. CONWAY: All right. Is that what the court wants
22 us to comply with?

23 THE COURT: Yes.

24 MR. CONWAY: Understood.

25 THE COURT: The Government has a right to do that

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1 under the False Claims Act. And I understand what the nature
2 of it is, so if that's it, we'll have language to be suggested
3 there to include that. I mean, I'm going to give you time to
4 comply with all this, but that's what's involved, yes.

5 MR. CONWAY: My only concern is that expands the
6 scope of the CID.

7 THE COURT: It may.

8 MR. CONWAY: It does.

9 THE COURT: I'm not going to make a finding one way
10 or the other.

11 MR. CONWAY: Just that means we're going to need more
12 time is what I'm trying to say.

13 THE COURT: That's fine. That's fine. I mean, I'm
14 not so concerned with the time. I'm concerned with -- I don't
15 want to say wasting the resources of the court. It's very
16 clear to me what this case is about when you break it down. It
17 is very simple. It is a [REDACTED]. [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED] I understand what it's about. [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 So to the extent that there's a modification of that, you
25 can take the appropriate steps, Mr. Asiyanbi, in terms of the

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1 commercial litigation branch. You're very experienced in this.
2 You can modify the CID, and that will be so modified and that
3 is the scope of the CID. I'm not going to dictate to the
4 Government what the scope of their CID should be. The issue
5 becomes the matter of reasonable time for you to comply.

6 MR. CONWAY: Right. My only point, Your Honor, it's
7 one you've made is, I just want to understand what the scope of
8 the CID is. If it's the things Mr. Asiyambi says, then send me
9 your revised CID and tell me that.

10 MR. ASIYANBI: The scope I'm describing today is
11 already in the CID. It's not new. And we've, again, described
12 it to counsel a number of times in conversations like this.

13 THE COURT: Well, the way to deal with that is to
14 submit a letter to the Court by tomorrow noting exactly what
15 the scope is, and the Government has every right to indicate
16 what the scope is. Defense counsel has every right to note
17 whether it's overly broad or burdensome, and we'll deal with it
18 accordingly. And then defense counsel has every right to ask
19 for more time on this. I'm not assessing blame as to why there
20 was a delay from six months January to July of this year. It
21 is what it is, but we're going to move forward with it. That's
22 why we're going to have status reports every 30 days.

23 So where are we, then, with the interrogatories? I've
24 said you have 30 days until Friday, November the 17th. Does
25 that still work for you, Mr. Conway?

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1 MR. CONWAY: well, I agree we need to get a letter
2 from Government counsel to the Court tomorrow specifying the
3 exact scope so that we understand.

4 THE COURT: That's fine.

5 MR. CONWAY: And I may need a little more time on the
6 interrogatories if the scope expands.

7 THE COURT: That's fine. I mean, quite frankly, you
8 can have until -- I guess you can have until Friday, December
9 the 1st if you want. I don't care. That'd be fine. whatever
10 you need.

11 MR. CONWAY: we'll look at that, Your Honor. That
12 will be helpful if we can get the letter tomorrow from
13 Government counsel.

14 THE COURT: well, I think my sense is we probably
15 should have the deadline for the response to interrogatories be
16 Friday, December the 1st. I believe that's a Friday, is it
17 not, Russell? December 1st is a Friday. Friday, December 1st.

18 MR. CONWAY: Fine, Your Honor. Thank you.

19 THE COURT: So that's fine. So we've got the
20 interrogatories resolved. we'll clarify the scope with respect
21 to the request for documents. There's obviously been extensive
22 production recently. And how much more time do you need on
23 that?

24 MR. CONWAY: well, I have -- as I've noted in my
25 papers, I have concerns with some of the Government's requests.

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1 THE COURT: Okay. All right. We can go through
2 them. Let's go through them.

3 MR. CONWAY: I can.

4 THE COURT: Among the 18, tell me which ones you have
5 a concern about.

6 MR. ASIYANBI: Are you talking about the proposed
7 order or the request for documents?

8 MR. CONWAY: I'm talking about your document requests
9 and my concern in my response to your petition.

10 THE COURT: Yeah, just why don't you just address the
11 Court. What are your concerns as to the document requests of
12 the 18?

13 MR. CONWAY: They are Number 3, Number 4, Number 6,
14 and Number 7.

15 THE COURT: Okay. Of the 18, there's a concern as to
16 four of them.

17 MR. CONWAY: 4, 3, 6, and 7, yes.

18 THE COURT: Now 3, documents sufficient to show your
19 [REDACTED], that objection
20 is sustained.

21 MR. CONWAY: Okay.

22 THE COURT: We're not going down that path from the
23 Government counsel. It's as simple as that. The [REDACTED]
24 [REDACTED] is not relevant to the matter of the
25 inquiry on [REDACTED] at this point in time. It may be a

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1 matter down the road but at least initially on a civil
2 Investigation Demand, it's really not relevant and I've already
3 indicated that. So that's a very broad request and that
4 objection is sustained as to that.

5 MR. CONWAY: Number 4, [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] [REDACTED]

9 THE COURT: And that is for the [REDACTED] [REDACTED]

10 MR. CONWAY: No, that's for everything. That's not
11 just [REDACTED].

12 THE COURT: I'm looking at the document request
13 specifically refers to [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED].

17 MR. CONWAY: Yes.

18 THE COURT: You want it to just indicate in
19 connection with Government contracting.

20 MR. CONWAY: If that's limited only to -- if that's
21 limited [REDACTED], that will be fine with us.

22 THE COURT: All right. Any problem with that right
23 now?

24 MR. ASIYANBI: No, Your Honor.

25 THE COURT: Okay. That will be amended. That

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1 objection to the document request Number 3 is sustained. The
2 document request Number 4 will be couched so that it --
3 [REDACTED] related to [REDACTED],
4 not that it's just included, that is what the focus is,
5 strictly [REDACTED], and that's fine.

6 MR. ASIYANBI: well, let me make this -- we're happy
7 to begin with [REDACTED]. This process can be iterative and this
8 is what we've been asking for for quite a while.

9 As I tried to explain to the court earlier, [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 THE COURT: we're going to limit it to [REDACTED] for
19 now.

20 MR. ASIYANBI: okay.

21 THE COURT: okay. That's fine. And then Number 6.

22 MR. CONWAY: 6 and 7 are the same issue, Your Honor.

23 THE COURT: we'll just limit it to [REDACTED].

24 MR. CONWAY: Yes, that will be fine. If that's the
25 case, then my objection will be resolved.

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1 THE COURT: All right. That's fine.

2 MR. ASIYANBI: Can I --

3 THE COURT: And I've got this tagged here. If you
4 want me to tag this, I'll put a paperclip on it.

5 MR. ASIYANBI: Your Honor, can I respond to 6 and 7
6 very quickly?

7 THE COURT: Sure. Sure.

8 MR. ASIYANBI: I think limiting 6 and 7 to [REDACTED]
9 would do a disservice to the Government's investigation because
10 I think some of the documents we need for this investigation
11 relates to [REDACTED].

12 THE COURT: Right.

13 MR. ASIYANBI: Those are [REDACTED]
14 [REDACTED], that's a limited principle, that relate to [REDACTED]
15 [REDACTED], that's a limited principle, and
16 the only question is [REDACTED],
17 whether that's [REDACTED] some
18 [REDACTED]

19 Limiting it to only [REDACTED] will actually cut short the
20 investigation in a way that doesn't allow us to follow the flow
21 of communications and be able to identify whether there's, in
22 fact, [REDACTED]
23 [REDACTED]
24 [REDACTED]. So we need those
25 communications that are co-occurring at the same time to be

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1 able to have confidence that we have understanding about the
2 facts of the case, and limiting it to [REDACTED] which counsel is
3 trying do would prevent us from doing that.

4 THE COURT: well, I don't know they're trying to
5 prevent you from doing it. The purpose of this is for you all
6 to get the investigation over.

7 MR. ASIYANBI: Yes, Your Honor.

8 THE COURT: The purpose is to have a result. And
9 we're trying to avoid six months of dead space because it gets
10 lost in a file somewhere. So the purpose of is it to stay
11 focused so you can achieve a goal.

12 MR. ASIYANBI: Correct.

13 THE COURT: So the goal is not to investigate a far
14 broader swath and have it take three years as opposed to a year
15 and four months, okay, because then it becomes overly
16 burdensome. It seems to me that to limit it to [REDACTED] at this
17 point in time would be constructive to get information and then
18 remains to be seen whether or not you think there's additional
19 information that needs to be gained.

20 MR. ASIYANBI: The challenge -- that's a possibility,
21 Your Honor, but the challenge is that when the [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED].

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1 THE COURT: I think the way to cut through this is
2 how many resellers are we talking about?

3 MR. ASIYANBI: There are only [REDACTED] resellers, Your
4 Honor, just [REDACTED]

5 THE COURT: Total?

6 MR. ASIYANBI: Total. And Carahsoft is --

7 THE COURT: There are more resellers involved
8 generally but in this investigation there are just [REDACTED]
9 resellers.

10 MR. ASIYANBI: [REDACTED] including Carahsoft, so there
11 are [REDACTED] and Carahsoft.

12 THE COURT: Mr. Conway, I gather that Carahsoft deals
13 with a lot more than three resellers generally but just in this
14 case it only involves three resellers; is that right?

15 MR. CONWAY: That is correct, and we deal with
16 hundreds of resellers.

17 THE COURT: All right. Well, I mean, I'm just
18 presuming that in the universe, apart from this type of
19 investigation, there are far more than [REDACTED] resellers but the
20 focus here is upon [REDACTED] resellers in terms of whether or not
21 it's [REDACTED] or any other contracts.

22 MR. CONWAY: well, as long as it's [REDACTED] there are
23 [REDACTED] resellers.

24 THE COURT: Okay.

25 MR. CONWAY: Once you go beyond that there can be --

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1 it can explode.

2 MR. ASIYANBI: Your Honor, we're only concerned about
3 [REDACTED] resellers including Carahsoft. So [REDACTED] other resellers,
4 Carahsoft makes the [REDACTED].

5 THE COURT: You made it for [REDACTED] or --

6 MR. ASIYANBI: [REDACTED]
7 [REDACTED], [REDACTED], there are
8 only [REDACTED] resellers no matter what the vehicle is.

9 THE COURT: Mr. Conway?

10 MR. CONWAY: As long as it's limited to [REDACTED]
11 there are only [REDACTED] resellers. Once you go beyond that
12 limiting scope of [REDACTED], the number --

13 THE COURT: Forget about [REDACTED] right now.

14 MR. CONWAY: I'm sorry?

15 THE COURT: This can be limited in scope to [REDACTED]
16 specific resellers, correct?

17 MR. ASIYANBI: Yes, Your Honor, and that's the --

18 THE COURT: That doesn't seem like that's
19 particularly onerous. I don't know how much of the market the
20 [REDACTED] resellers require, Mr. Conway, but it seems very simple,
21 the Government can specify, I know it's redacted here and we've
22 kept the names of the resellers out of this public proceeding,
23 but the Government can specify under seal the [REDACTED] specific
24 resellers as to Request 6 and 7, and it's [REDACTED]
25 [REDACTED] and it's [REDACTED] of

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1 them and it isn't just limited to [REDACTED]. No reason for us to
2 come back around and have to go through this a second time. I
3 understand what the nature of it is.

4 MR. ASIYANBI: We can also state that in our letter,
5 Your Honor.

6 THE COURT: well, you'll put it under seal. Put it
7 under seal.

8 MR. ASIYANBI: Yes, Your Honor.

9 THE COURT: Essentially that provides the necessary
10 focus for you, Mr. Conway. Your company, along with [REDACTED]
11 other specified companies --

12 MR. CONWAY: [REDACTED]

13 THE COURT: -- is under [REDACTED]

14 [REDACTED]

15 [REDACTED].

16 MR. CONWAY: I believe it's Carahsoft and [REDACTED] other
17 resellers, Your Honor.

18 THE COURT: I can't define what it is. The
19 Government contends there might be [REDACTED] I don't know. I
20 don't know. whatever. You all know your case.

21 MR. CONWAY: If you say -- do you say it's Carahsoft
22 plus [REDACTED] or Carahsoft plus [REDACTED]

23 MR. ASIYANBI: There is Carahsoft, there are [REDACTED]
24 [REDACTED]. There are subcontractors but the [REDACTED]

25 [REDACTED]

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1 Carahsoft.

2 THE COURT: Including Carahsoft. Then it can be
3 limited in that fashion. You can do it and they can put it
4 under seal and be so limited. So it's not just limited to [REDACTED]
5 [REDACTED] as to those [REDACTED] other resellers. It's essentially
6 communications between your client and representatives of your
7 client and those resellers.

8 MR. CONWAY: If we do that, we're going to need more
9 time because --

10 THE COURT: I'm sure you would. How much time do you
11 want?

12 MR. CONWAY: well, we ran the name of the primary
13 Company A through our system and we got 20 million hits.

14 THE COURT: okay.

15 MR. CONWAY: So if we limit it to [REDACTED], we're there
16 now, but if we have to go beyond [REDACTED] to do resellers for other
17 programs [REDACTED] -- correct?

18 THE COURT: Mr. Conway, you keep inquiring of the
19 Government. It's not complicated. This is a [REDACTED]
20 [REDACTED]. [REDACTED] It
21 doesn't involve 10, 11, 20. It involves [REDACTED] companies.
22 That's it. And to the extent there are communications between
23 your client and those [REDACTED] companies, they're entitled to
24 have it. Carahsoft can't [REDACTED] by itself, so it's very
25 simple. As to the matter of the [REDACTED], it's not limited to

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1 that as to those [REDACTED] other companies. The document Request 6
2 and 7 are appropriate, and any objection is overruled.

3 Now, we'll go over how much time you need. You'll have
4 until December 1 in terms of response to interrogatories. You
5 want to have until mid January on the document response?

6 MR. CONWAY: Mid January would be fine, once I see
7 the Government's letter, but mid January will be fine, yes.

8 THE COURT: We'll make it -- what day is January 15,
9 Russell?

10 THE CLERK: That's a Monday.

11 THE COURT: Okay, Monday. Actually, I never make
12 deadlines on a Monday because it ruins people's weekends. So I
13 see Ms. Ortega nodding in agreement on that because she winds
14 up having to spend all Saturday and Sunday -- we're laughing
15 here -- working on this, as well as Mr. Vaccarella would
16 prefer. So we'll have deadlines on Fridays here so people can
17 then -- you know, my wife is reminding me to do that for 35
18 years, but that's another matter. So we'll have the deadline
19 be Friday the 19th.

20 THE CLERK: Yes.

21 THE COURT: Friday, January 19th --

22 MR. CONWAY: That's fine.

23 THE COURT: -- of 2024.

24 MR. CONWAY: That's fine, Your Honor.

25 THE COURT: All right. Any other issues that we need

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1 to address?

2 MR. ASIYANBI: Text messages, Your Honor.

3 THE COURT: Text messages, okay.

4 MR. ASIYANBI: Yes, sir.

5 THE COURT: Okay. Go ahead.

6 MR. ASIYANBI: So initially, at the start of this
7 process, we identified four custodians to start with and said
8 provide to us text messages for those four custodians.
9 Mr. Conway's produced text messages for three of those
10 custodians, not four. For the three custodians from whom he
11 produced text messages, only one of them has any substantive
12 contact. For the one custodian where we received some level of
13 text messages, we received 4,000 text messages over a time
14 period of -- over a period of time. So we don't know if that's
15 complete but nevertheless that's substantive.

16 For the other two custodians, one we only received I think
17 237 text messages, and for a third one we received maybe 26
18 text messages. And for the third one, for example, the text
19 messages were received all started after we served the CID on
20 Carahsoft and after federal agents contacted its employees and
21 notified them of the investigation. And counsel hasn't been
22 able to identify text messages prior to that time period for
23 the third custodian. He hasn't produced a full set of text
24 messages for the second custodian and he hasn't produced any
25 text messages for any other custodians, even though within

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1 asking for those text messages since June of 2022. So that's
2 still outstanding as well.

3 THE COURT: Mr. Conway?

4 MR. CONWAY: Yes, Your Honor. My understanding -- we
5 have produced a number of text messages. My understanding from
6 Government counsel is that they want all text messages from
7 four individuals, [REDACTED]
8 [REDACTED]. That's my understanding of what he wants,
9 and we provided some of those. We can provide more. It's just
10 a question of going and getting the cell phones and digging
11 into them.

12 THE COURT: That's fine.

13 MR. CONWAY: And that's what the text messages are.

14 THE COURT: You have plenty of time until mid January
15 to do that, correct?

16 MR. CONWAY: Mid January will be fine.

17 THE COURT: That's fine. Any problems with that,
18 Mr. Asiyambi? Is that fine?

19 MR. ASIYANBI: The timeline is fine. The concern we
20 have, if he hasn't collected text messages up until now for
21 some of those custodians, some of those text messages may be
22 lost. So we just want to place on the record that at some
23 point in time, at the appropriate time, if the United States
24 were to take enforcement action in this matter, we will seek --
25 we would ask the Court to make --

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1 THE COURT: well, you are raising a spoliation issue
2 here is. That what you're saying?

3 MR. ASIYANBI: There is serious concern of
4 spoliation, Your Honor.

5 THE COURT: well, that's a little early in the game
6 to raise that now, I think.

7 MR. ASIYANBI: I'm sorry?

8 THE COURT: I said it's a little early in the game
9 here to be raising a spoliation issue now.

10 MR. ASIYANBI: If I may explain.

11 THE COURT: Sure.

12 MR. ASIYANBI: With text messages, those messages
13 dissipate. They just fall off the text messages, for lack of a
14 better way to put it. So as soon as you know that you may have
15 text messages that are critical to an investigation, it's
16 important for the party to take serious steps to preserve those
17 text messages.

18 THE COURT: Right.

19 MR. ASIYANBI: When those text messages are not
20 preserved, one of three things could happen. One, an employee
21 could leave the company. That's already occurred at least with
22 three employees. And once the employee leaves the company, it
23 becomes almost impossible to collect those text messages from
24 them.

25 Another thing that would happen, which happens to many of

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1 us, is someone could just change the cell phone, and if you get
2 a new cell phone after the subpoena's been issued but before
3 the documents were collected, then some of those text messages
4 may never be retrievable again because the cell phone has been
5 changed.

6 And a third thing that can happen is, you know, because of
7 space limitation on the device, the cell phones could just
8 dissipate over time as they do. You know, if you look at your
9 text messages, Your Honor, oftentimes you can't scroll too far
10 back up because those messages are no longer present on the
11 phone.

12 And so time becomes of essence and we did explain this to
13 Mr. Conway over a year ago that time is of the essence as to
14 those initial four custodians and time is also of the essence
15 with any other custodian who might have text messages within
16 the scope of the CID. And to our knowledge, they haven't
17 collected text messages for those other custodians and that's
18 why spoliation is a serious concern.

19 THE COURT: How many other custodians are there?

20 MR. ASIYANBI: Well, right now we're 30.

21 THE COURT: 30 custodians of text messages.

22 MR. ASIYANBI: Well, it may be less than 30 that have
23 text messages. We know we have 30 for documents.

24 THE COURT: All right.

25 MR. ASIYANBI: And in the course of an investigation

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1 of this size, counsel would actually talk to those employees,
2 people who are still with the company to figure out which one
3 of them communicated by text and --

4 THE COURT: what is the request we're dealing with?
5 Is this in the context of an interrogatory or request for
6 production of documents? what is the context of your inquiry
7 in terms of the text messages?

8 MR. ASIYANBI: It's in the context of request for
9 documents, and we know this because we know that a lot of the
10 employees do talk by text messages about the subject of our
11 investigation.

12 THE COURT: And specifically, which one of the 18
13 request for documents addresses text messages?

14 MR. ASIYANBI: It's all of the them, Your Honor. So
15 you can look at the definitions section of documents or
16 communications.

17 THE COURT: well, I understand, then, to the extent
18 that you're focusing upon certain employees or account
19 representatives, to the extent that you -- the definition A,
20 communication is used in the broadest sense permitted by Rule
21 26(b), 34(a), and 45(e) and means any transmission or exchange
22 of information orally or in writing. That would include text
23 messages. That's your point.

24 MR. ASIYANBI: Yes, Your Honor, as does Number 3 as
25 well, definition of documents.

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1 **THE COURT:** Right. Well, that's fine. Mr. Conway
2 and Ms. Ortega may need more time on that, but I think at least
3 for now have that include text messages with those individuals
4 and that will be due by Friday, January 19th as well.

5 **MR. ASIYANBI:** Thank you, Your Honor.

6 **THE COURT:** All right. Any other issues from the
7 point of view of the Government?

8 **MR. ASIYANBI:** Just briefly regarding the documents.
9 Part of the challenges we've had over the past couple of months
10 is making sure that the process that Carahsoft is using to,
11 one, collect documents and to process those documents reflect
12 the process that's common in the practice in the industry,
13 that's just reliable, that's sensible, and that's likely to
14 capture all of the documents necessary for -- to respond to the
15 CID. And up until now, we haven't received any description
16 that gives us comfort. In fact, all of the explanation we've
17 gotten so far hasn't given us any comfort that the process is
18 adequate to respond. Initially --

19 **THE COURT:** I'm not sure if you understand -- you are
20 saying there aren't Bates stamp numbers to these documents?

21 **MR. ASIYANBI:** No, no, no. It's not that, Your
22 Honor. It's, you know, initially, when we asked for search
23 terms for the documents, counsel said they were privileged and
24 wasn't going to produce them to us, and then we asked to
25 describe the process for collecting and processing documents,

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1 and he pointed us to a passage in his response pleading to this
2 Court. We explained that that passage doesn't adequately
3 describe a process for collecting and processing.

4 Let me give the Court an example. When you collect
5 e-mails, you don't just go into your e-mail file and type in
6 words. You actually go in the back end of those e-mails and
7 you collect all of the e-mails and then you search through it
8 through a process that's more technical than I have capacity
9 for. And that's the process we described at the outset and
10 said, let's talk about this, you tell us what you're doing, if
11 we have concerns, we'll let you know.

12 Counsel hasn't been able to provide that to us before the
13 petition, he still hasn't provided it after the petition, and
14 that's another sticking point between the two of us, that there
15 isn't a process that's designed to fully respond to the CID and
16 what we anticipate is going to happen is January is going to
17 come, he's going to produce, I anticipate, tons of documents to
18 us and yet those tons of documents aren't going to fully
19 respond to the CID because they're not designed to respond
20 fully to the CID. So the process matters just as much as the
21 volume does.

22 THE COURT: Well, I guess the first step is, are you
23 dictating the process to be undertaken?

24 MR. ASIYANBI: No, Your Honor.

25 THE COURT: So what process do you want to be

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1 undertaken?

2 **MR. ASIYANBI:** In the initial instance we said, you
3 tell us what process you want to use, and if we have concerns,
4 we'll tell you what our concerns are. We are agnostic as to
5 the process. All we're saying is that --

6 **THE COURT:** Well, stop. Wait a minute. If you don't
7 like it you come to the Court. The Government doesn't make all
8 the decisions here, okay? The Court will make the ultimate
9 decision. That's why this matter is going to be assigned to a
10 magistrate judge.

11 **MR. ASIYANBI:** Yes, Your Honor.

12 **THE COURT:** Okay. So you don't dictate how it's
13 going to work. The magistrate judge will make a ruling as to
14 how it's going to work.

15 **MR. ASIYANBI:** Yes, Your Honor.

16 **THE COURT:** All right.

17 **MR. ASIYANBI:** The last thing I'll say about that, I
18 have no objection whatsoever to what Your Honor said.

19 **THE COURT:** Okay.

20 **MR. ASIYANBI:** That makes a lot of sense to me. The
21 only reason I come back to this question of process is if you
22 spend the time and resources and don't do it the right way the
23 first time around, then it takes more time and resources for
24 everyone involved, both the Government and the other side. And
25 this is why oftentimes both sides negotiate these things.

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1 **THE COURT:** well, it seems to me, I thought for the
2 Court to dictate the process at this point in time, defense
3 counsel understands what their obligations are and they'll act
4 accordingly. In terms of your concern what the process is, the
5 defense counsel, Blank Rome is a very reputable law firm,
6 they've been through massive ESI cases before and massive
7 document cases in terms of how they catalog and what they do.
8 You can determine what that process is.

9 At some point in time if you think it's deficient, you
10 just need to notify the Court that you need to have a hearing
11 on this because you think it's deficient. You really can't
12 prove a negative. You just have to wait and see what the
13 process is.

14 Mr. Conway, do you want to be heard on this? I'm not
15 really sure what the objection is by the Government.

16 **MR. CONWAY:** well, neither am I, Your Honor. We
17 outlined the process in our response to the Government that we
18 used. The Government said they didn't like it. They thought
19 it was not electronic enough. It wasn't technical enough. It
20 didn't use search terms. They didn't like our process.

21 We talked with the Government and in order to get rid of
22 this dispute, we said, we'll do it your way, we'll do it
23 electronically, which is what the Government asked for. We'll
24 use search terms. We won't use four custodians, we'll use 30
25 custodians. We gave you the list of those custodians and we'll

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1 do all that. That yielded over 3 million hits. We then
2 applied search terms, that came down to 450,000 pages of
3 documents, just like the Government asked for. I'm not sure
4 what else we could have done beyond what the Government says.
5 There's no requirement to the CID as to the process we are to
6 use here. There's no stipulation, there's no requirement.

7 THE COURT: That's correct.

8 MR. CONWAY: So we use the best process we had, the
9 Government didn't like it, and that's the source of most of the
10 contention here, the Government doesn't like what we're doing.

11 THE COURT: All right.

12 MR. CONWAY: So we've rolled over to help the
13 Government out.

14 THE COURT: The Government hasn't defined what they
15 want to have done, so that suffices.

16 MR. CONWAY: Right.

17 THE COURT: And if an issue is raised up later, the
18 Government can raise it and either it will be sustained or it
19 will be overruled. It's as simple as that. If you have a
20 specific suggestion, they can make it, but it's not up to the
21 Government to dictate what process is used. It's up to the
22 Government to issue a Civil Investigative Demand and seek
23 compliance with it with reasonable deadlines, but I don't think
24 there's really an issue on the text messages at this point in
25 time. Any other issues from the Government?

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1 MR. ASIYANBI: No, Your Honor.

2 THE COURT: Okay. Mr. Conway, any other issues from
3 your point of view?

4 MR. CONWAY: No, Your Honor. We just want to get the
5 Government's letter tomorrow so we can see.

6 THE COURT: Okay, that's fine. All right. With
7 that, I think we'll get a letter order out by tomorrow at the
8 end of the day. We'll get a letter order out tomorrow sort of
9 memorializing this as well as for the reasons set forth here on
10 the record, and the deadlines will be established in terms of
11 production for December 1 as to interrogatories and January 15
12 as to document production.

13 I will tell you that we'll definitely have this matter be
14 assigned to a magistrate judge in terms of status reports every
15 30 days to keep this matter on track, and if there are issues
16 to be raised, either here or on a Zoom conference or whatever
17 in terms of the cost to the litigants, we can do it accordingly
18 because it's a civil case, but I'll make sure that there's a
19 magistrate judge available and we'll have 30-day status reports
20 so we don't have any six months of dead space here. And I
21 think that's the way to go and it would provide appropriate
22 monitoring of this case at this point in time.

23 So there being nothing else further from Government or
24 defense counsel, thank you all very much, and this court stands
25 adjourned for the day. Thank you.

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MR. ASIYANBI: Thank you, Your Honor.

MR. CONWAY: Thank you, Your Honor.

(The proceedings concluded at 3:48 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Amanda L. Longmore, Registered Professional Reporter and Federal Certified Realtime Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 19th day of October 2023

-S-

AMANDA L. LONGMORE, RPR, FCRR
FEDERAL OFFICIAL COURT REPORTER

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